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10/538,451

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Pierre McDuff

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EXAMINER

REESE, DAVID C

ART UNIT

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3677

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/538,451 | Applicant(s) MCDUFF ET AL. | |
| | Examiner David C. Reese | Art Unit 3677 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 01 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) 3, 15, 17, 20, 23-31, 34, 46, 48, 51, 54-62 and 64-68 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-10, 13, 14, 16, 18, 19, 21, 22, 32, 33, 35-41, 45, 47, 49, 50, 52, 53 and 63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

- Claims 3, 15, 17, 20, 23-29, 30-31, 34, 46, 48, 51, 54-59, 60-62, and 64-68 are withdrawn (see below).
- Claims 1-68 are pending.

Election/Restrictions

[1] Claims 3, 20, 23-28, 30-31, 34, 51, 54-59, 61-62, 64-68 are withdrawn by applicant from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely did not traverse the restriction (election) requirement in the reply filed on 6/22/2007; so therefore, the election is treated as an election without traverse. Further, the examiner has also withdrawn claims 15, 46 (and depending claims 17, 48) since the frangible elements from claim 15 and 46 are only found and disclosed in other non-elected figures (such as that from figs. 1-2 and 7-8); as well as claims 29 and 60 since the stopper as claimed is found and disclosed in only non-elected figures of 5-6 and 7-8.

The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

[2] Claims 14 and 45 are objected to because of the following informalities: “parallelly” should be “parallel”.

Claims 16 and 47 are objected to because of the following informalities: “a third outer thread” is claimed, but first and second threads have not been defined in the instant claim or dependent ones therefrom.

Appropriate correction is required.

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[3] Claims 11 and 42 recites the limitation "said second outer threads" in the instant claim.

There is insufficient antecedent basis for this limitation in the claim and dependent one therefrom.

Claim Rejections - 35 USC § 102

[4] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[5] Claims 1-2, 4-10, 13-14, 16, 18-19, 21-22, 32-33, 35-41, 45, 47, 49-50, 52-53, and 63 are rejected under 35 U.S.C. 102(b) as anticipated by Smith, US-5,690,454, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

The shape and appearance of Smith is identical in all material respects to that of the claimed design, *Hupp v. Siroflex of America Inc.*, 122 F.3d 1456, 43 USPQ2d 1887 (Fed. Cir. 1997).

As for Claim 1, Smith discloses of an anchor (110) for mounting to a hollow wall, comprising a proximal end adapted to be engaged by a rotatable tool to rotate said anchor about a longitudinal axis thereof and to cause it to gradually engage a wall, a distal end (118) adapted to

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cut through the wall as said anchor is rotated, and a shank between said proximal and distal ends, said shank including at least one expandable leg (114), said expandable leg being in a collapsed position thereof when said anchor is rotated to mount it to the wall and being located distally past a rear surface of the wall once said anchor is mounted to the wall, said anchor including outer threads (outside of 112, threads between 116 and 114, and 120), said anchor being adapted to receive therein a threaded fastener (46) and to threadably engage the same distally of said leg such that sufficient rotation of the threaded fastener retracts said distal end towards said proximal end thereby causing said leg to displace to a laterally expanded position thereof.

Re: Claim 2, wherein said anchor (110) is made of a molded unitary construction.

Re: Claim 4, wherein said shank comprises, distally of said leg, a tubular section (118) defining a first inner thread (inside 118, see fig. 44C) adapted to be threadably engaged by the threaded fastener (46).

Re: Claim 5, wherein said distal end (118) defines a second inner thread adapted to be threadably engaged by the threaded fastener (inside 118 has two threads).

Re: Claim 6, wherein said first and second inner threads (threads inside 118) are substantially continuous and have a same pitch.

Re: Claim 7, wherein said distal end (118) defines an opening through which the threaded fastener (46) can extend.

Re: Claim 8, wherein said outer threads (outside of 112, threads between 116 and 114, and 120) include a first outer thread (outside of 112) provided on said shank between said proximal end and said leg (114) and engaged in the wall when said leg (114) is in said expanded position.

Re: Claim 9, wherein said outer threads (outside of 112, thread between 116 and 114, and 120) include a second outer thread (120) provided between said leg (114) and said distal end (118).

Re: Claim 10, wherein said shank comprises, distally said leg, a tubular section (118) adapted to be threaded ably engaged by the threaded fastener (46), said second outer thread (120) being provided around said tubular section (118).

Re: Claim 13, wherein said proximal end comprises a flanged head defining a recess for engageably receiving the rotatable tool.

Re: Claim 14, wherein there are provided at least two said legs (114), said legs (114) extending substantially parallelly in said collapsed position.

Re: Claim 16, wherein said outer threads (outside of 112, threads between 116 and 114, and 120) include a third outer thread (threads between 116 and 114) provided around said legs (114), and adapted in said expanded position to extend at least partly into the rear surface of the wall.

Re: Claim 18, wherein each said leg (114) comprises a distal and a proximal section adapted to outwardly fold when passing from said collapsed to said expanded positions.

Re: Claim 19, wherein said proximal and distal sections are connected by a pivot (depression found between the threads found between 116 and 114).

Re: Claim 21, wherein said distal and proximal sections are substantially of a same length at least in said collapsed position, such that, in said expanded position, said proximal and distal sections extend outwardly in substantially close relationship.

Re: Claim 22, wherein there are provided four legs (114), said legs (114) being similar and being disposed such as to deploy in a substantially cruciform pattern.

As for Claim 32, Smith discloses of anchor assembly for mounting to a hollow wall, comprising a threaded fastener (46) and an anchor (110); said anchor including a proximal end adapted to be engaged by a rotatable tool to rotate said anchor about a longitudinal axis thereof and to cause it to gradually engage a wall, a distal end (118) adapted to cut through the wall as said anchor is rotated, and a shank between said proximal and distal ends, said shank including at least one expandable leg (114), said expandable leg being in a collapsed position thereof when said anchor is rotated to mount it to the wall and being located distally past a rear surface of the wall once said anchor is mounted to the wall, said anchor including outer threads (outside of 112, threads between 116 and 114, and 120), said anchor being adapted to receive therein said threaded fastener (46) and to threadably engage the same distally of said leg (114) such that sufficient rotation of said threaded fastener retracts said distal end towards said proximal end thereby causing said leg to displace to a laterally expanded position thereof.

Re: Claim 33, wherein said anchor (110) is made of a molded unitary construction.

Re: Claim 35, wherein said shank comprises, distally of said leg, a tubular section (118) defining a first inner thread (inside 118, see fig. 44C) adapted to be threadably engaged by the threaded fastener (46).

Re: Claim 36, wherein said distal end (118) defines a second inner thread adapted to be threadably engaged by the threaded fastener (inside 118 has two threads).

Re: Claim 37, wherein said first and second inner threads (threads inside 118) are substantially continuous and have a same pitch.

Re: Claim 38, wherein said distal end defines an opening through which the threaded fastener (46) can extend.

Re: Claim 39, wherein said outer threads (outside of 112, threads between 116 and 114, and 120) include a first outer thread (outside of 112) provided on said shank between said proximal end and said leg (114) and engaged in the wall when said leg (114) is in said expanded position.

Re: Claim 40, wherein said outer threads (outside of 112, threads between 116 and 114, and 120) include a second outer thread (120) provided between said leg (114) and said distal end.

Re: Claim 41, wherein said shank comprises, distally said leg, a tubular section (118) adapted to be threaded ably engaged by the threaded fastener (46), said second outer thread (120) being provided around said tubular section (118).

Re: Claim 44, wherein said proximal end comprises a flanged head defining a recess for engageably receiving the rotatable tool.

Re: Claim 45, wherein there are provided at least two said legs (114), said legs (114) extending substantially parallelly in said collapsed position.

Re: Claim 47, wherein said outer threads (outside of 112, threads between 116 and 114, and 120) include a third outer thread (threads between 116 and 114) provided around said legs (114), and adapted in said expanded position to extend at least partly into the rear surface of the wall.

Re: Claim 49, wherein each said leg (114) comprises a distal and a proximal section adapted to outwardly fold when passing from said collapsed to said expanded positions.

Re: Claim 50, wherein said proximal and distal sections are connected by a pivot (depression found between the threads found between 116 and 114).

Re: Claim 52, wherein said distal and proximal sections are substantially of a same length at least in said collapsed position, such that, in said expanded position, said proximal and distal sections extend outwardly in substantially close relationship.

Re: Claim 53, wherein there are provided four legs (114), said legs (114) being similar and being disposed such as to deploy in a substantially cruciform patter.

As for Claim 63, DE 19720406 discloses of anchor (110) for mounting to a hollow wall, comprising a proximal end adapted to be engaged by a rotatable tool to rotate said anchor about a longitudinal axis thereof and to cause it to gradually engage a wall, a distal end and a shank between said proximal and distal ends, said shank including at least one expandable means (114), said expandable means (114) being in a collapsed position thereof when said anchor is rotated to mount it to the wall, said anchor including outer threads (outside of 112, threads between 116 and 114, and 120), said anchor being adapted to receive therein a threaded fastener (46) and to threadably engage the same distally of said expandable means such that sufficient rotation of the threaded fastener retracts said distal end towards said proximal end thereby causing said expandable means to displace to a laterally expanded position thereof behind the wall.

Allowable Subject Matter

[6] Claims 11-12 and 42-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

[7] The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited further to show the state of the art with respect to this particular type of fastener: please see submitted notice of reference cited.

[8] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272-7082. The examiner can normally be reached on 7:30 am-6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached at (571) 272-6987. The fax number for the organization where this application or proceeding is assigned is the following: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Reese

/D. C. R./
Examiner, Art Unit 3677

/Victor Batson/

Supervisory Patent Examiner, Art Unit 3677